

The letter discusses issues regarding self-assessing de minimis servicemen. See 86 Ill. Adm. Code 140.108. (This is a GIL.)

August 10, 2006

Dear Xxxxx:

This letter is in response to your letter dated September 23, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

The intent of this letter is to request information for one of our vendors regarding self-assessing sales tax.

Currently we do not pay sales tax to our vendors on materials used. Instead we self assess the tax and pay it on the materials that are taxable when we file our monthly sales tax report.

The reason we self assess are that we cannot always tell up front which customer the materials will be used for. Some of our customers are resellers, some ship out of state, some are exempt organizations, and some are taxable.

Also, we buy some supplies in bulk and pay tax on a percent calculated by total purchases for the month. For instance, we might buy 500 lbs of ink at one time. We then would print a taxable job and use up 100 lbs. Then we would print a nontaxable job and use up 400 lbs. of ink. Therefore, we would pay tax on 20% of the ink purchased (100 lbs). The 400 lbs. is exempt from taxation.

Please forward any tax rulings and or sunshine letters that relate to the issue of self-assessing sales tax so I may provide these to my vendor.

DEPARTMENT'S RESPONSE:

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. If tangible personal property is not transferred, tax is not incurred. For your general information please see 86 Ill. Adm. Code Part 140 regarding sales of service and Service Occupation Tax. These regulations may be found on the Department's Internet website under the heading of "Laws/Regs/Rulings."

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon how the serviceman calculates his or her liability. There are four ways that the tax can be calculated:

- (1) Separately stated selling price;
- (2) 50% of the entire bill;
- (3) Service Occupation Tax on the cost price if they are registered de minimis servicemen; or,
- (4) Use Tax on the cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.101(f). This class of registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service.

Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers. See 86 Ill. Adm. Code 140.108.

The final method of determining tax liability may be used by de minimis servicemen not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in

graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. Please note, servicemen no longer have the option of determining whether they are de minimis using a transaction-by-transaction basis. See 86 Ill. Adm. Code 140.109.

For information regarding self-assessing de minimis servicemen, see 86 Ill. Adm. Code 140.108(a)(1) through 140.108(a)(2)(A). There are certain limited exceptions in which Use Tax payments may be made directly to the Department. Those situations are very limited and are to be utilized only when the payment of Use Tax to the retailer is not an alternative. If purchasers have purchased tangible personal property and the sellers did not collect Use Tax from them at the time of sale, the Department's regulations require the purchasers to self-assess the appropriate amount of Use Tax on those purchases and remit that amount directly to the Department. See 86 Ill. Adm. Code 150.701(a). Your letter request indicates that your company is engaged in printing. You may find helpful information by reviewing general information letter ST-04-0198-GIL. The Department's regulations and "Sunshine Letter" rulings may be found on the Department's Internet website under the heading of "Laws/Regs/Rulings."

In addition, your letter request indicates you cannot always tell up front which supply purchases you make will be for purposes of resale or sold at retail. If a purchaser is registered to remit Service Occupation Tax and he knows that a certain percentage of all purchases from a given seller will be made for purposes of resale, a seller may accept a percentage Certificate of Resale specifying that a certain portion of the sales made by such seller to such purchaser will be made for purposes of resale. If a seller can accept such a certificate in good faith, Illinois law imposes no additional requirements on the seller to verify the claimed percentage. See 86 Ill. Adm. Code 130.1405(c)(2).

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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